

RECORDING REQUESTED BY :

City of Carlsbad
Development Services Department

WHEN RECORDED MAIL TO:

City Clerk
City of Carlsbad
1200 Carlsbad Village Dr.
Carlsbad, CA. 92008

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSESSOR'S PARCEL NO. _____

PROJECT NO. _____

**PERMANENT STORMWATER QUALITY BEST MANAGEMENT PRACTICE MAINTENANCE
AGREEMENT**

DATE OF AGREEMENT: _____

OWNER NAME: _____

PROJECT NAME: _____

RESOLUTION NUMBER: _____

CONDITION NUMBER: _____

DRAWING NUMBER: _____

STORM WATER MANAGEMENT PLAN (SWMP) NUMBER: _____

This agreement is made and entered into by and between the City of Carlsbad, California, a Municipal Corporation of the State of California, hereinafter referred to as "City"; and the Property Owner named on the current Deed of Trust as referenced above, hereinafter referred to as "Owner".

RECITALS

WHEREAS, Owner is proceeding to develop a property more particularly described in **Exhibit A**, hereinafter referred to as "the Property"; and

WHEREAS, development of the Property has been approved by the City, and is subject to the requirements of the State of California Regional Water Quality Control Board-San Diego Region Order No. ORDER NO. 2001-01/NPDES NO. CAS0108758, as promulgated within the City of

Carlsbad Public Works Department, Standard Urban Storm Water Mitigation Plan-Storm Water Standards, 2003 hereinafter referred to as “storm water regulations” and incorporated herein by this reference; and

WHEREAS, the Owner is required to comply with all Federal, State and Local storm water regulations by employing permanent post-construction Best Management Practices (BMP’s), hereinafter referred to as “permanent BMP(s)” to ensure impacts to storm water quality are mitigated to the maximum extent practicable (MEP) prior to being discharged from the Property; and

WHEREAS, the City and the Owner, its successors and assigns agree that the health safety, and welfare of the residents of Carlsbad, California, require that permanent BMP(s) be established, constructed, inspected, and operated and maintained in perpetuity on the Property; and

WHEREAS, the storm water regulations require that permanent BMP(s) be established, constructed and adequately inspected, operated and maintained by the Owner, its successors and assigns, including any homeowner or property owner association; and

WHEREAS, the Owner has caused to be prepared a Storm Water Management Plan (SWMP) report and drawing(s) which together detail the objectives, design, construction, inspection and operation and maintenance responsibility requirements of the permanent BMP(s) recommended to mitigate impacts to storm water quality due to the development of the Property, hereinafter collectively referred to as the “Storm Water BMP Plan” and incorporated herein by this reference; and,

WHEREAS, storm water regulations require that the City ensure the continued existence and inspection, operation and maintenance of the permanent BMP(s); and

WHEREAS, the City has required the recordation of this agreement as a condition of approval of the project that secures the construction, inspection, operation and maintenance of on-site permanent BMP(s) by the Owner, its successors and assigns, including any property owners association, in perpetuity, and

NOW, THEREFORE, in consideration of the approval of this project, the foregoing

promises, the mutual covenants contained herein, and the following terms and conditions, Owner and City agrees as follows:

1. Owner shall comply with all the requirements of said storm water regulations and any applicable amendments thereto, and with any other provisions of law.
2. The permanent BMP(s) shall be established and constructed by Owner, its successors and assigns, in accordance with the plans and specifications identified in the Storm Water BMP Plan and modification to the approved permanent BMP(s) shall not be made without prior approval of the City Engineer.
3. Owner, its successors and assigns, including any homeowner or property owner association, shall adequately, inspect, operate and maintain the permanent BMP(s). This includes all pipes and channels built to convey storm water to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water runoff and any associated practices and programs. Adequate maintenance is herein defined as good working condition so that the permanent BMP(s) are performing in accordance with their design objectives and functions.
4. Owner, its successors and assigns, shall inspect applicable permanent BMP(s) as often as conditions require, or at frequencies recommended in the approved Storm Water BMP Plan, but in any event at least once each year prior to the rainy season. The purpose of the inspection is to assure continued safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc. Owner shall submit an inspection report annually to the City in a form as proscribed in the Storm Water BMP Plan or as may be proscribed by the City. Deficiencies shall be noted in the inspection report. Any deficiencies, repairs or maintenance obligations shall be noted in a record form and immediately remedied by the Owner.
5. Owner shall maintain inspection, operation and maintenance records for at least five (5) years. These records shall be made available to the City for inspection upon request at any time.
6. Owner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the permanent BMP(s) whenever

the City deems necessary. The purpose of inspection is to follow-up on reported deficiencies to respond to State and Federal mandated storm water facility inspection requirements and/or to respond to citizen complaints. The City shall provide Owner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs or corrective measures if necessary.

7. In the event the Owner, its successors and assigns, fails to take corrective action to maintain the permanent BMP(s) in good working condition acceptable to the City, the City may enter upon the Property and take whatever steps necessary to correct deficiencies identified in the inspection report and to charge the costs of such repairs to the Owner, its successors and assigns. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Owner outside of the easement for the permanent BMP(s), if an easement is provided, or outside the limits of the permanent BMP(s) facility footprint described on the Storm Water BMP Plan, if an easement is not provided. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

8. Owner, its successors and assigns, will perform the work necessary to keep the permanent BMP(s) in good working order as appropriate. In the event a maintenance schedule for the permanent BMP(s) is outlined in the approved Storm Water BMP Plan, the schedule shall be followed.

9. In the event the City pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder. If not paid within the prescribed time period, the City shall secure a lien against the Property in the amount of such costs. The actions described in this section are in addition to and not in lieu of any and all legal remedies available to the City as a result of Owner's failure to maintain the permanent BMP(s).

10. Owner agrees that the permanent BMP(s) are privately-owned, operated and maintained by the Owner and acceptance of the work by the City shall not constitute a responsibility of the City to maintain them nor a Waiver of Defects by City.

11. Owner agrees that all residual material that is a byproduct of the proper operation and maintenance of permanent post-construction BMP's (waste) will be disposed of according to all federal, state and local regulations.

12. The City or any officer or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omission of Owner, its agents or employees in the performance of this agreement. Owner further agrees to protect and hold harmless City, its officials and employees from any and all claims, demands, causes or action, liability or loss of any sort because or arising out of acts or omissions of Owner, its agents or employees in the performance of this agreement, including claims, demands, causes of action, liability, or loss because of or arising out of the design or construction of the permanent post-construction BMP facilities. Said indemnification and agreement to hold harmless shall extend to injuries to person and damages or taking of property resulting from the design or construction of said permanent BMP(s) as provided herein, and to adjacent property owner as a consequence of the diversion of waters from the design, construction or maintenance of drainage systems, streets, and other improvements.

13. This Agreement shall be recorded against the Property and shall constitute a covenant running with the land and shall be binding upon Owner, its successors and assigns, including any homeowner or property owner association.

14. Invalidity of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, this agreement is executed by the City of Carlsbad, acting by and through its City Manager, pursuant to Section 20.16.060 of the Carlsbad Municipal Code authorizing such execution, and by Owner.

APPLICANT:

(Name of Owner)

By: _____
(sign here)

(print name here)

(title and organization of signatory)

By: _____
(sign here)

(print name here)

(title and organization of signatory)

CITY OF CARLSBAD, a municipal corporation of the State of California

ROBERT T. JOHNSON, JR., P.E.
Acting City Engineer

By: _____
David A. Hauser, Deputy City Engineer
RCE 33081 Exp. 06/30/2008

(Proper notarial acknowledgment of execution by OWNER must be attached)

(Chairman, president **or** vice-president **and** secretary, assistant secretary, CFO **or** assistant treasurer must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.)

APPROVED AS TO FORM:

RONALD R. BALL
City Attorney

By: _____
Deputy City Attorney

EXHIBIT 'A'